

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DANIEL MILLER,

Plaintiff,

v.

No. 22-cv-0597 KRS/SMV

**WAGNER EQUIPMENT COMPANY and
JAY HERR,**

Defendants.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court sua sponte. Plaintiff filed his Complaint in state court on March 1, 2022. [Doc. 1-1] at 3–4. Defendant Wagner Equipment Co. removed the action on August 11, 2022. [Doc. 1]. Plaintiff had 90 days from the date of removal, or until November 9, 2022, to effect service of process on Defendant Herr. *See* Fed. R. Civ. P. 4(m) (2015) (providing 90 days for service); *Wallace v. Microsoft Corp.*, 596 F.3d 703, 706 (10th Cir. 2010) (service time begins on date of removal). The 90 days have passed, and there is no indication on the record that service of process has been effected with respect to the Defendant Herr.

IT IS THEREFORE ORDERED that Plaintiff show good cause why his claims against Defendant Herr should not be dismissed without prejudice for failure to comply with the service provision of Rule 4(m). *See Espinoza v. United States*, 52 F.3d 838, 841 (10th Cir. 1995). Plaintiff must file his response no later than **December 1, 2022**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge